

PART 14

SEALED BIDDING

14.201-2 Part I—The Schedule.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>The contracting officer shall prepare the Schedule as follows:</p> <p>* * * * *</p> <p>(b) <i>Section B, Supplies or services and prices.</i> Include a brief description of the supplies or services; e.g., item number, national stock number/part number if applicable, title or name identifying the supplies or services, and quantities (see Part 10, Specifications, Standards, and Other Product Descriptions). The SF 33 and the SF 1447 may be supplemented as necessary by the Optional Form 336 (OF 336), Continuation Sheet (53.302-336).</p> <p>(c) <i>Section C, Description/specifications.</i> Include any description or specifications needed in addition to Section B to permit full and open competition (see Part 10, Specifications, Standards, and Other Product Descriptions).</p> <p>(d) <i>Section D, Packaging and marking.</i> Provide packaging, packing, preservation, and marking requirements, if any (see 10.004(e)).</p> <p>* * * * *</p> <p>(f) <i>Section F, Deliveries or performance.</i> Specify the requirements for time, place, and method of delivery or performance (see Part 12, Contract Delivery or Performance).</p> <p>* * * * *</p>	<p>The contracting officer shall prepare the Schedule as follows:</p> <p>* * * * *</p> <p>(b) <i>Section B, Supplies or services and prices.</i> Include a brief description of the supplies or services; e.g., item number, national stock number/part number if applicable, title or name identifying the supplies or services, and quantities (see Part 11). The SF 33 and the SF 1447 may be supplemented as necessary by the Optional Form 336 (OF 336), Continuation Sheet (53.302-336).</p> <p>(c) <i>Section C, Description/specifications.</i> Include any description or specifications needed in addition to Section B to permit full and open competition (see Part 11).</p> <p>(d) <i>Section D, Packaging and marking.</i> Provide packaging, packing, preservation, and marking requirements, if any.</p> <p>* * * * *</p> <p>(f) <i>Section F, Deliveries or performance.</i> Specify the requirements for time, place, and method of delivery or performance (see Subpart 11.4, Delivery or Performance Schedules). [FAC 90-32]</p> <p>* * * * *</p>

14.201-6 Solicitation provisions.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>* * * * *</p> <p>(e) The contracting officer shall insert in invitations for bids, except those for construction, the provisions at—</p> <p>(1) 52.214-9, Failure to Submit Bid; and</p> <p>* * * * *</p>	<p>* * * * *</p> <p>(e) The contracting officer shall insert in invitations for bids, except those for construction, the provisions at—</p> <p>(1) 52.214-9, Failure to Submit Bid, except when using electronic data interchange methods not requiring solicitation mailing lists; and * * * * * [FAC 90-29]</p>

52.214-9 Failure to Submit Bid.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>FAILURE TO SUBMIT BID (APR 1984)</p> <p>Recipients of this solicitation not responding with a bid should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter or postcard whether they want to receive future solicitations for similar requirements. If a recipient does not submit a bid and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.</p> <p>(End of provision)</p>	<p>FAILURE TO SUBMIT BID (JUL 1995)</p> <p>Recipients of this solicitation not responding with a bid should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a recipient does not submit a bid and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.</p> <p>[FAC 90-29] (End of provision)</p>

14.201-7 Contract clauses.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-26, Audit—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of cost or pricing data at 15.804-2(a)(1).</p> <p>* * * *</p> <p>(d) Contracting officers shall, if requested by the prime contractor, modify contracts to change the threshold in the contract to the cost or pricing data threshold in 15.804-2(a)(1), without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of clauses 52.214-27, Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding, and 52.214-28, Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses</p> <p>(e) When contracting by sealed bidding the contracting officer shall insert the clause at 52.214-29, Order of Precedence—Sealed Bidding, in solicitations and contracts to which the uniform contract format applies.</p>	<p>(a) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-26, Audit and Records—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold at 15.804-2(a)(1) for submission of cost or pricing data. [FAC 90-31]</p> <p>* * * *</p> <p>(d) When contracting by sealed bidding the contracting officer shall insert the clause at 52.214-29, Order of Precedence—Sealed Bidding, in solicitations and contracts to which the uniform contract format applies.</p> <p>[Redesignated as (d) by FAC 90-32]</p>

52.214-26 Audit and Records—Sealed Bidding.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
AUDIT AND RECORDS--SEALED BIDDING (APR 1985)	AUDIT AND RECORDS--SEALED BIDDING (OCT 1995)
<p>(a) <i>Cost or pricing data.</i> If the Contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or a representative who is an employee of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data.</p> <p>In the case of pricing any modification, the Comptroller General of the United States or a representative who is an employee of the Government shall have the same rights.</p> <p>(b) <i>Availability.</i> The Contractor shall make available at its office at all reasonable times the materials described in paragraph (a) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.</p> <p>(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.</p> <p>(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.</p>	<p>(a) As used in this clause, <i>records</i> includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.</p> <p>(b) <i>Cost or pricing data.</i> If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—</p> <p>(1) The proposal for the modification;</p> <p>(2) The discussions conducted on the proposal(s), including those related to negotiating;</p> <p>(3) Pricing of the modification; or</p> <p>(4) Performance of the modification.</p> <p>(c) <i>Comptroller General.</i> In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.</p> <p>(d) <i>Availability.</i> The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.</p> <p>(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.</p> <p>(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.</p>

(c) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts ~~over \$10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the contracting office under the Government prime contract.~~

(End of clause)

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts **expected to exceed the threshold in FAR 15.804-2(a)(1) for submission of cost or pricing data.** [FAC 90-31]

(End of clause)

14.202-1 Bidding time.

FAR as of FAC 90-25

* * * * *

(b) *Factors to be considered.* Because of unduly limited bidding time, some potential sources may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, consideration shall be given to such factors as the following in establishing a reasonable bidding time: (1) degree of urgency; (2) complexity of requirement; (3) anticipated extent of subcontracting; (4) whether use was made of presolicitation notices; (5) geographic distribution of bidders; and (6) normal ~~mailing~~ time for both invitations and bids.

FAR as revised

* * * * *

(b) *Factors to be considered.* Because of unduly limited bidding time, some potential sources may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, consideration shall be given to such factors as the following in establishing a reasonable bidding time: (1) degree of urgency; (2) complexity of requirement; (3) anticipated extent of subcontracting; (4) whether use was made of presolicitation notices; (5) geographic distribution of bidders; and (6) normal **transmittal** time for both invitations and bids. [FAC 90-29]

14.202-2 Telegraphic bids.

FAR as of FAC 90-25

- (a) Telegraphic bids and mailgrams shall be authorized only when—
- (1) The date for the opening of bids will not allow bidders sufficient time to submit bids ~~on~~ the prescribed ~~forms~~; or
 - (2) Prices are subject to frequent changes.

FAR as revised

- (a) Telegraphic bids and mailgrams shall be authorized only when—
- (1) The date for the opening of bids will not allow bidders sufficient time to submit bids **in** the prescribed **format**; or [FAC 90-29]
 - (2) Prices are subject to frequent changes.

14.202-8 Electronic bids. [New]

In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use. [FAC 90-29]

14.203-1 Mailing or delivery to prospective bidders.

FAR as of FAC 90-25

Invitations for bids or presolicitation notices shall be ~~mailed or delivered to prospective bidders~~ as specified in 14.205, and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by international air mail if security classification permits.

FAR as revised

Invitations for bids or presolicitation notices shall be **transmitted** as specified in 14.205, and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by **electronic data interchange** or international air mail if security classification permits. [FAC 90-29]

14.205 Solicitation mailing lists.

14.205-1 Establishment of lists.

FAR as of FAC 90-25

(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed, however, when the requirements of the contracting office can be obtained ~~within the local trade area~~ through use of the ~~small purchase~~ procedures (see Part 13), ~~or~~ are nonrecurring. Lists may be established as ~~(1)~~ a central list for use by all contracting offices within the contracting activity, or ~~(2)~~ local lists maintained by each contracting office.

* * * * *

(e) Business concerns listed on solicitation mailing lists shall be identified by size in accordance with 19.102. Size status should be established before listing a business concern on a list. Disadvantaged business concern designations shall be shown on the list whenever noted on the Standard Form 129 submitted by a particular concern.

FAR as revised

(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed, however, when **(1)** the requirements of the contracting office can be obtained through use of **simplified acquisition** procedures (see Part 13), **(2) the requirements** are nonrecurring, or **(3) electronic commerce methods are used which transmit solicitations or presolicitation notices automatically to all interested sources participating in electronic contracting with the purchasing activity**. Lists may be established as a central list for use by all contracting offices within the contracting activity, or **as** local lists maintained by each contracting office. [FAC 90-29]

* * * * *

(e) Business concerns listed on solicitation mailing lists shall be identified by size in accordance with 19.102. Size status should be established before listing a business concern on a list. Disadvantaged **and women-owned small** business concern designations shall be shown on the list whenever noted on the Standard Form 129 submitted by a particular concern. [FAC 90-32]

14.205-4 Excessively long solicitation mailing lists.

FAR as of FAC 90-25

* * * * *

(b) *Rotation of lists.* By using different portions of a list for separate acquisitions, solicitation mailing lists may be rotated. However, considerable judgment must be exercised in determining whether the size of the acquisition justifies the rotation. The use of a presolicitation notice (see paragraph (c) below), time permitting, also should be considered. In rotating a list, the interests of small businesses (see 19.202-4) and labor surplus areas (see 20.104(e) and (f)) shall be considered. Whenever a list is rotated, bids shall be solicited from (1) the previously successful bidder, (2) prospective suppliers who have been added to the solicitation mailing list since the last solicitation, and (3) concerns on the segment of the list selected for use in a particular acquisition. However, the rule does not apply when such action would be precluded by use of a total set-aside (see ~~Parts 19 and 20~~).

* * * * *

FAR as revised

* * * * *

(b) *Rotation of lists.* By using different portions of a list for separate acquisitions, solicitation mailing lists may be rotated. However, considerable judgment must be exercised in determining whether the size of the acquisition justifies the rotation. The use of a presolicitation notice (see paragraph (c) below), time permitting, also should be considered. In rotating a list, the interests of small, **small disadvantaged and women-owned small** businesses (see 19.202-4) shall be considered. Whenever a list is rotated, bids shall be solicited from (1) the previously successful bidder, (2) prospective suppliers who have been added to the solicitation mailing list since the last solicitation, and (3) concerns on the segment of the list selected for use in a particular acquisition. However, the rule does not apply when such action would be precluded by use of a total set-aside (see **Part 19**). [FAC 90-32]

* * * * *

14.206 Small business set-asides.

FAR as of FAC 90-25

14.206 Small business and labor surplus area set-asides.

See parts 19 and 20.

FAR as revised

14.206 Small business set-asides.

(See Part 19.) [FAC 90-32]

14.209 Cancellation of invitations before opening.

FAR as of FAC 90-25

* * * * *

(b) When an invitation is canceled, bids that have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations were issued.

FAR as revised

* * * * *

(b) When an invitation is canceled, bids that have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations were issued. **For bids received electronically, the data received shall not be viewed and shall be purged from primary and backup data storage systems.** [FAC 90-29]

14.301 Responsiveness of bids.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>***</p> <p>(d) Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation and (2) award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation.</p>	<p>***</p> <p>(d) Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation and (2) award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation.</p> <p>(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. [FAC 90-29]</p>

52.214-5 Submission of Bids.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>SUBMISSION OF BIDS (DEC 1989)</p> <p>***</p>	<p>SUBMISSION OF BIDS (JUL 1995)</p> <p>***</p> <p>(d) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. [FAC 90-29]</p>

14.303 Modification or withdrawal of bids.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) Bids may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids not later than the exact time set for opening of bids.</p> <p>***</p>	<p>(a) Bids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for opening of bids.</p> <p>***</p> <p>(c) Upon withdrawal of an electronically transmitted bid, the data received shall not be viewed and shall be purged from primary and backup data storage systems. [FAC 90-29]</p>

14.304-1 General.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
Bids received in the office designated in the invitation for bids after the exact time set for opening are “late bids.”	Bids received in the office designated in the invitation for bids after the exact time set for opening are “late bids.”
(a) A late bid, modification of bid, or withdrawal of bid shall not be considered unless received before contract award, and either— * * * *	(a) A late bid, modification of bid, or withdrawal of bid shall not be considered unless received before contract award, and — * * * *
(3) * * * * .	(3) * * * *; or (4) It was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. [FAC 90-29]

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (DEC 1989)	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (JUL 1995)
(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it— * * * *	(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it— * * * *
(3) * * * * *	(3) * * * *; or (4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m., one working day prior to the date specified for receipt of bids. * * * * [FAC 90-29]

52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (DEC 1989)	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (JUL 1995)
(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for	(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for

receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

* * * *

(3) * * * *

receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

* * * *

(3) * * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals; or * * * * [FAC 90-29]

52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (OVERSEAS) (DEC 1989)	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (OVERSEAS) (JUL 1995)
(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.	(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—
* * * *	(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or
	(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. The term "working day" excludes weekends and U.S. Federal holidays. [FAC 90-29]
	* * * *

52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas).

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (OVERSEAS) (DEC 1989)	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (OVERSEAS) (JUL 1995)
(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time	(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time

specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) * * * *

(2) Is the only technical proposal received.
* * * *

specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) * * * *

(2) **Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals. The term "working day" excludes weekends and U.S. Federal holidays; or**

(3) Is the only technical proposal received.
* * * * [FAC 90-29]

14.401 Receipt and safeguarding of bids.

FAR as of FAC 90-25

(a) All bids (including modifications) received before the time set for the opening of bids shall be kept secure. Except as provided in paragraph (b) ~~below~~, the bids shall remain ~~unopened~~ in a locked bid box or safe. If an invitation for bids is canceled, bids shall be returned to the bidders. Necessary precautions shall be taken to ensure the security of the bid box ~~or~~ safe. Before bid opening, information concerning the identity and number of bids received shall be made available only to Government employees. Such disclosure shall be only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

FAR as revised

(a) All bids (including modifications) received before the time set for the opening of bids shall be kept secure. Except as provided in paragraph (b) **of this section**, the bids shall **not be opened or viewed, and shall** remain in a locked bid box, a safe, **or in a secured, restricted-access electronic bid box**. If an invitation for bids is canceled, bids shall be returned to the bidders. Necessary precautions shall be taken to ensure the security of the bid box or safe. Before bid opening, information concerning the identity and number of bids received shall be made available only to Government employees. Such disclosure shall be only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening. [FAC 90-29]

14.402-3 Postponement of openings.

FAR as of FAC 90-25

(a) A bid opening may be postponed even after the time scheduled for bid opening (but otherwise in accordance with 14.208) when—

(1) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, or strikes); or * * * *

FAR as revised

(a) A bid opening may be postponed even after the time scheduled for bid opening (but otherwise in accordance with 14.208) when—

(1) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails, **or in the communications system specified for transmission of bids**, for causes beyond their control and without their fault or negligence

(e.g., flood, fire, accident, weather conditions, strikes, or **Government equipment blackout or malfunction when bids are due**); or * * * * FAC 90-29]

14.404-1 Cancellation of invitations after opening.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
* * * * *	* * * * *
(b) When it is determined before award but after opening that the requirements of 10.008 (relating to the availability and identification of specifications) have not been met, the invitation shall be canceled.	(b) When it is determined before award but after opening that the requirements of 11.201 (relating to the availability and identification of specifications) have not been met, the invitation shall be canceled. [FAC 90-32]
* * * * *	* * * * *

14.406 Receipt of an unreadable electronic bid.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
[Section added by FAC 90-29.	If a bid received at the Government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the invitation for bids cannot be ascertained, the contracting officer immediately shall notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence—
Old section 14.406 <i>Mistakes in bids</i> now 14.407;	(a) Of the content of the bid as originally submitted; and
Old section 14.407 <i>Award</i> now 14.408; and Old	(b) That the unreadable condition of the bid was caused by Government software or hardware error, malfunction, or other Government mishandling.
section 14.408 <i>Information to bidders</i> now 14.409.	
New section numbering used below.]	

14.407-2 Apparent clerical mistakes.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
* * * * *	* * * * *
(b) Correction of the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.	(b) Correction of the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.

(c) **Correction of bids submitted by electronic data interchange shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bid verification.** [FAC 90-29]

14.408-1 General.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) The contracting officer shall make a contract award (1) by written notice, (2) within the time for acceptance specified in the bid or an extension (see 14.404-1(d)), and (3) to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only price and the price-related factors (see 14.201-8) included in the invitation. Award shall not be made until all required approvals have been obtained and the award otherwise conforms with 14.103-2.</p> <p>* * * *</p> <p>(d)(1) Award is generally made by using the Award portion of Standard Form (SF) 33, Solicitation, Offer, and Award, or SF 1447, Solicitation/Contract (see 53.214). If an offer from a SF 33 leads to further changes, the resulting contract shall be prepared as a bilateral document on SF 26, Award/Contract.</p> <p>(2) Use of the Award portion of SF 33, SF 26, or SF 1447, does not preclude the additional use of informal documents, including telegrams, as notices of awards.</p>	<p>(a) The contracting officer shall make a contract award (1) by written or electronic notice, (2) within the time for acceptance specified in the bid or an extension (see 14.404-1(d)), and (3) to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only price and the price-related factors (see 14.201-8) included in the invitation. Award shall not be made until all required approvals have been obtained and the award otherwise conforms with 14.103-2.</p> <p>* * * *</p> <p>(d)(1) Award is generally made by using the Award portion of Standard Form (SF) 33, Solicitation, Offer, and Award, or SF 1447, Solicitation/Contract (see 53.214). If an offer from a SF 33 leads to further changes, the resulting contract shall be prepared as a bilateral document on SF 26, Award/Contract.</p> <p>(2) Use of the Award portion of SF 33, SF 26, or SF 1447, does not preclude the additional use of informal documents, including telegrams or electronic transmissions, as notices of awards. [FAC 90-31]</p>

14.408-6 Equal low bids. [FAC 90-29]

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:</p> <p>(1) Small business concerns that are also labor surplus area concerns.</p> <p>(2) Other small business concerns.</p> <p>(3) Other business concerns that are also labor surplus area concerns.</p> <p>(4) Other business concerns.</p> <p>* * * *</p>	<p>(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:</p> <p>(1) Small business concerns that are also labor surplus area concerns.</p> <p>(2) Other small business concerns.</p> <p>(3) Other business concerns.</p> <p>* * * *</p> <p>[FAC 90-32]</p>

14.409-1 Award of unclassified contracts.

FAR as of FAC 90-25

(a)(1) The contracting officer shall as a minimum (subject to any restrictions in Subpart 9.4)—

(i) Notify unsuccessful bidders promptly that ~~their bids were not accepted;~~

(ii) Extend appreciation for the interest the unsuccessful bidders have shown in submitting a bid; and

(iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), agencies shall ~~promptly, but in no event later than 7 working days after award, give unsuccessful offerors from designated or NAFTA countries written notice stating—~~

~~(i) That their offers were not accepted;~~

~~(ii) That a contract has been awarded;~~

~~—(iii)—The dollar amount of the successful offer; and~~

~~—(iv)—The name and address of the successful offeror.~~

~~(b) Notification to unsuccessful bidders may be oral or in writing through the use of a form postal card or other appropriate means.~~

~~(c) Should additional information be requested, the contracting officer shall provide the unsuccessful bidders with the name and address of the successful bidder, the contract price, and the location where a copy of the abstract of offers is available for inspection. However, when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office, only information concerning location of the abstract of offers need be given.~~

* * * * *

FAR as revised

(a)(1) The contracting officer shall as a minimum (subject to any restrictions in Subpart 9.4)—

(i) Notify **each** unsuccessful bidder **in writing or electronically within three days after contract award**, that **its bids was** not accepted. **"Day", for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday;**

(ii) Extend appreciation for the interest the unsuccessful bidder has shown in submitting a bid; and

(iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), **agencies shall include in notices given** unsuccessful **bidders** from designated or NAFTA countries—

(i) The dollar amount of the successful **bid**; and

(ii) The name and address of the successful **bidder**.

(b) Information included in paragraph (a)(2) of this subsection shall be provided to any unsuccessful bidder upon request except when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office. **In such circumstances**, only information concerning location of the abstract of offers need be given.

* * * * *

[FAC 90-31]

14.502 Conditions for use.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
(a) * * * * *	(a) * * * * *
(b) None of the following precludes the use of two-step sealed bidding:	(b) None of the following precludes the use of two-step sealed bidding:
(1) Multi-year contracting.	(1) Multi-year contracting.
(2) Government-owned facilities or special tooling to be made available to the successful bidder.	(2) Government-owned facilities or special tooling to be made available to the successful bidder.
(3) A total small business and/or labor surplus area set aside (see 19.502-2 and 20.201).	(3) A total small business set-aside (see 19.502-2). [FAC 90-32]
(4) A first or subsequent production quantity is being acquired under a performance specification.	(4) A first or subsequent production quantity is being acquired under a performance specification.

52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
As prescribed in 14.201-7(b), insert the following clause: PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (NOV 1994)	As prescribed in 14.201-7(b), insert the following clause: PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (OCT 1995)
(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to any modification for which the price is— —(1) Based on adequate price competition; —(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or —(3) Set by law or regulation. * * * * *	(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.804-1 applies. * * * * *

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) * * * * *

(2) ~~For Department of Defense contracts only~~; a penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) * * * * *

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

[FAC 90-32]

52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

FAR as of FAC 90-25

As prescribed in 14.201-7(c), insert the following clause in solicitations and contracts:

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING
(DEC 1994)

(a) * * * * *

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) ~~when entered into, or~~ pricing any subcontract modification involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is

~~—(1) Based on adequate price competition;~~

~~—(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or~~

~~—(3) Set by law or regulation.~~

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) when entered into.

(End of clause)

FAR as revised

As prescribed in 14.201-7(c), insert the following clause in solicitations and contracts:

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING
(OCT 1995)

(a) * * * * *

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), **on the date of agreement on price or the date of award, whichever is later; or before** pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless **an exception under FAR 15.804-1 applies.**

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, **when entered into**, exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1).

(End of clause)

[FAC 90-32]